



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/572,863

03/22/2006

Antonio Silvio Sampaio Doria

2918.00002

7295

10534 7590 04/10/2009  
BLISS MCGLYNN, P.C.  
2075 WEST BIG BEAVER ROAD  
SUITE 600  
TROY, MI 48084

EXAMINER

VARNUM, RYAN A

ART UNIT

PAPER NUMBER

4118

MAIL DATE

DELIVERY MODE

04/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/572,863 | <b>Applicant(s)</b><br>DORIA, ANTONIO SILVIO<br>SAMPAIO |  |
|                              | <b>Examiner</b><br>RYAN VARNUM       | <b>Art Unit</b><br>4118                                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/16/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because the abstract uses the term “said”, a term of legal significance. Correction is required. See MPEP § 608.01(b).
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 1 and 12 recite the limitation of “an oblong round wall” (Claim 1, Line 3; and Claim 12, Line 3). The specification discloses only “a round wall” (Page 3, Line 11 and Page 4, line 8).

***Claim Objections***

4. Claims 2-13 are objected to because of the following informalities: the preamble of each claim should not be written in all capital letters. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 2, 4, 7, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. In re Claims 1, 2, 12 and 13, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). [See: Claim 1, Lines 3-4; Claim 2, Line 3; Claim 12, Line 3; and Claim 13, Line 3]

8. In re Claims 2 and 13, it is unclear to the examiner whether Applicant intends to claim a device comprising all of the listed limitations (i.e. – A, B and C), or a device comprising at least one of the listed limitations (i.e. – A, B or C). [See: Claim 2, A-C; and Claim 13, A-D].

Art Unit: 4118

9. In re Claim 4, it is unclear to the examiner which element Applicant intends to claim as being "made of a resilient material" (Line 3). As written, the claim may be read to claim either the seat or the body of the package as being made of resilient material.

10. In re Claim 7, the claim recites the limitation "the cap" (Line 3). There is insufficient antecedent basis for this limitation in the claim.

11. In re Claim 13, the phrase "any other kinds of packages" (Line 7) is indefinite in that the metes and bounds of the claim have not been clearly defined.

### ***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

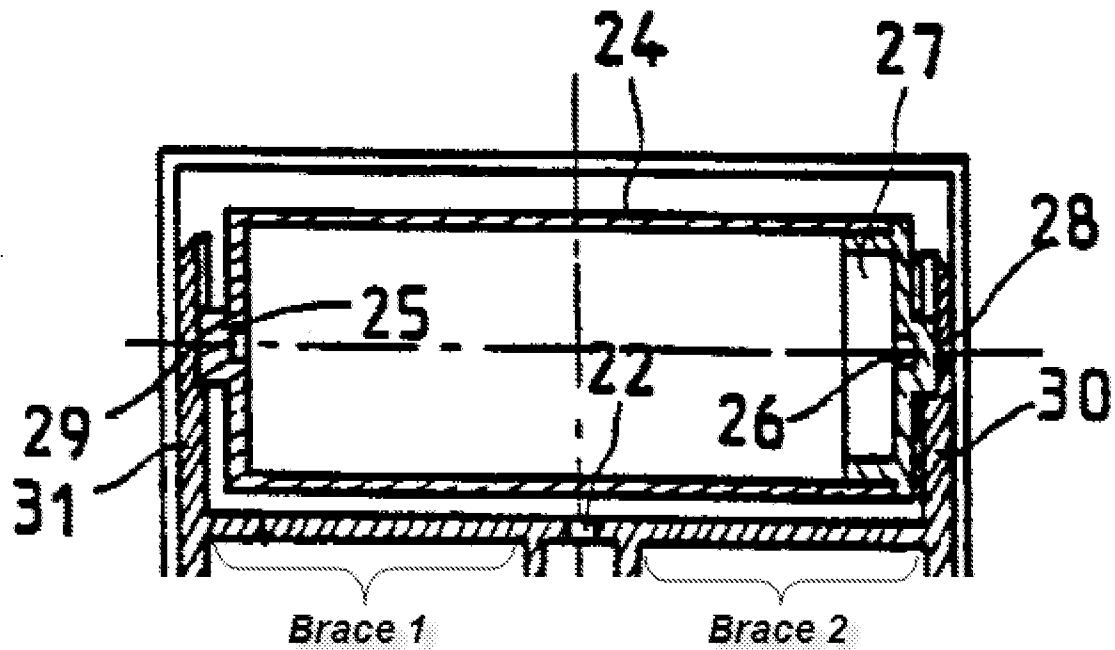
13. Claims 1, 4, 6, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucas (US Patent 5,026,193).

14. In re Claim 1, Lucas discloses a cylindrical applicator for dispensing cosmetic compositions in the form of liquid, cream, gel, and others, onto the human skin, adaptable to various kinds and shapes of packages (Column 1, Lines 60-61), comprising: a cylinder 24 (Fig. 1; Column 2, Lines 36-37), an element bounded by an oblong round wall, such as a tube, and two circular, flat, equal and parallel ends, ("cylinder"; Fig. 1; Column 2, Lines 36-37); and a seat 16 ("distributor"; Fig.'s 1-2;

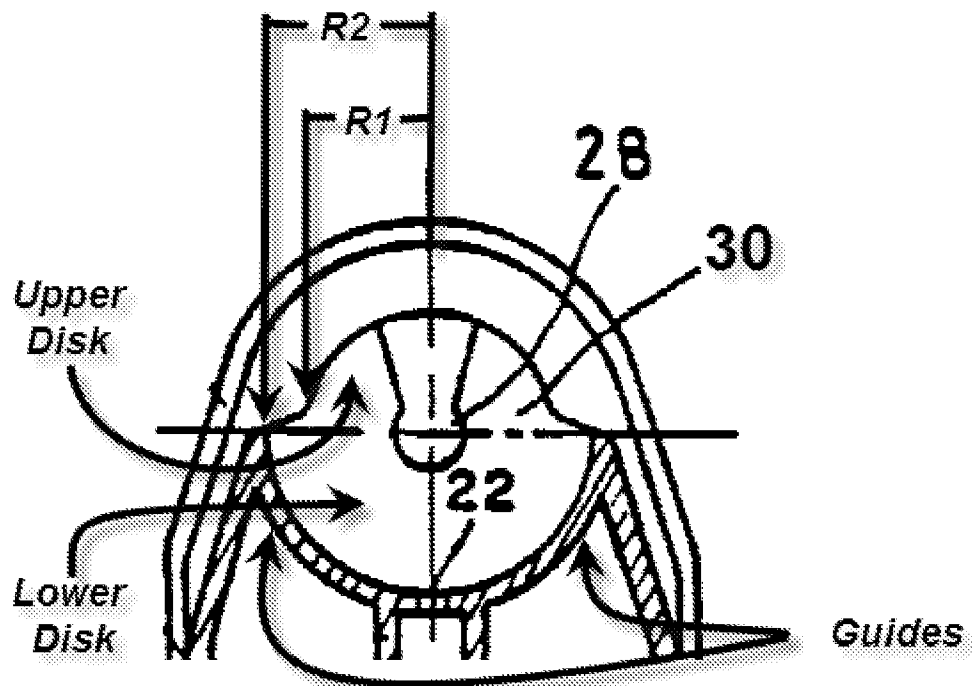
Art Unit: 4118

Column 2, Lines 10-12), which comprises: two semicircular guides ("Guides"; See Annotated Partial Fig. 2 below), directed toward the inside, two support circles 30/31 ("flanges"; Fig.'s 1-2; Column 2, Line 43) at its ends formed by disks of two circumferences, being the upper disk smaller than the lower one ("Upper Disk", and "Lower Disk"; See Annotated Partial Fig. 2 below), with a smaller radius ("R1" and "R2"; See Annotated Partial Fig. 2 below), two inferior braces ("Braces 1/2"; See Annotated Partial Fig. 1 below), which define the length of the distribution opening 22 (Fig.'s 1-2; Column 2, Lines 21-22), being said cylinder encased in said seat by being pressed into it ("engaged via a resilient deformation"; Column 2, Lines 42-43; it being understood that such deformation is achieved by pressing the cylinder with pins, into the depression to cause such resilient deformation), where said cylinder is supported mainly by the semicircular guides (Fig.'s 1-2) and is free to roll.

Art Unit: 4118



**Annotated Partial Fig. 1**



**Annotated Partial Fig. 2**

15. In re Claim 4, Lucas further discloses the seat 16 (Fig.'s 1-2) is a distinct element from the main body of the package 1 ("container"; Fig. 1; Column 1, Line 60), molded separately (Column 1, Lines 19-22), made of a resilient material (Column 2, Line 42), which seat fits within the mouth of the main body of the package in fluid-tight connection (Column 1, Lines 14-18).

16. In re Claim 6, Lucas further discloses the seat 16 (Fig.'s 1-2) is provided with a gating 6 ("cylindrical socket"; fig.'s 1-2; Column 1, Lines 67-68), at its lower part, with holes 8 (Fig. 2; Column 2, Line 1) that control the flow of the product (Column 2, Lines 52-58).

17. In re Claim 10, Lucas further discloses the cylinder 24 (Fig. 1) is provided with knobs 25/26 ("pins"; Fig. 1; Column 2, Line 37) at its ends, and the support circles 30/31 (Fig.'s 1-2) are provided with a recess 28/29 ("depressions"; Fig.'s 1-2; Column 2, Line 43), which knob and recess together constitute a loose connection (Column 2, Lines 42-43).

18. In re Claim 13, Lucas discloses the cylindrical applicator constitutes the head section of any other kind of packages (Column 1, Lines 60-61).

19. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Wiley (US Patent 6,126,352). Wiley discloses a cylindrical applicator for dispensing cosmetic compositions (Title), adaptable to various kinds and shapes of packages, comprising: a cylinder 44 (Fig.'s 1 and 2), an element bounded by an oblong round wall, such as a



Art Unit: 4118

tube, and two circular, flat, equal and parallel ends (Fig. 2), and a quadrangular seat 42 (Fig.'s 1 and 2) comprising four main quadrangular sides 34 (Fig. 2), with one opening 32 ("dispensing opening"; Fig. 5; Column 3, Line 39) at the bottom and one opening ("front of the roller basket"; Column 3, Line 63) at the top, which openings constitute edges inside which the cylinder is encased, being the bottom sides provided with holes.

### ***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 2, 3 and 11, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas.

22. In re Claim 2, Lucas discloses all the claimed features, but does not explicitly disclose the cylindrical applicator constituting the head section of tubular packages made of resilient material, tubular packages made of rigid material, or flexible tube packages. However, it is the opinion of the Examiner that it would be obvious to adapt the applicator of Lucas to constitute the head section of flexible tube packages. This is especially true where Lucas explicitly states that the cross-section of the container may be absolutely of any type (Column 1, Lines 60-61).

Art Unit: 4118

23. In re Claim 3, Lucas discloses all the claimed features, except for the seat 16 (Fig.'s 1-2) is part of the main body of the package 1 (Fig.'s 1-2), being said seat and container molded as a single unit. However, it is the opinion of the Examiner that it would be obvious to combine these known elements of the seat and package, by means of the known method of molding, for the purpose of reducing production costs of manufacturing the device, and simplifying the use of device, by providing fewer parts.

24. In re Claim 11, Lucas discloses all the claimed features, except for the cylinder is provided with recesses at its ends, and the support circles are provided with knobs, which knobs and recesses together constitute a loose connection. However, Lucas does teach the cylinder 24 is provided with knobs 25/26 ("pins"; Fig.'s 1-2; Column 2, Line 37) at its ends, and the support circles 30/31 ("flanges"; Fig.'s 1-2; Column 2, Line 43) are provided with recesses 28/29 ("depressions"; Fig.'s 1-2; Column 2, Line 43), which knobs and recesses together constitute a loose connection (Column 2, Lines 42-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the location of the knobs and recesses, between the cylinder and support circles, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

25. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas in view of Vines (US Patent 2,717,116). Lucas discloses all the claimed features, except for the seat being provided with two straight notches at the upper part of each

Art Unit: 4118

semicircular guide. However, Vines teaches the use of a notch 32 (“a short transverse slit”; Fig. 3; Column 5, Line 54) in the surface of a retention structure (“carton”; Title) for the purpose of giving the structure more flexibility at that point (Column 5, Lines 53-64).

26. Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Lucas, to include straight notches at the upper part of each semicircular guide, as taught by Vines, for the purpose of giving the structure more flexibility at that point.

27. It would have further been obvious to such a skilled person to use two such notches in each semicircular guide, since It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

28. Claims 7, 8 and 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas in view of Wiley.

29. In re Claim 7, Lucas discloses all the claimed features, except for the seat having external quadrangular and planar walls that enable a cap to slide down and fit around it, by pressure. However, Wiley teaches an applicator device comprising a cylindrical applicator 44 (Fig.'s 1 and 2) and a seat 42 (“roller basket”; Fig.'s 1 and 2), wherein the seat has external quadrangular and planar walls 34 (Fig. 2) that enable a cap 46 (Fig.'s 1 and 2) to slide down and fit around it, by pressure (“snap off and on”; Column 3, Lines 61-62), for the purpose of providing an applicator which is easy to manufacture (Column 2, Lines 15-19) due to the simple shape of the parts.

Art Unit: 4118

30. Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Lucas, such that the seat has external quadrangular and planar walls that enable a cap to slide down and fit around it, by pressure, as taught by Wiley, for the purpose of providing an applicator which is easy to manufacture due to the simple shape of the parts.

31. In re Claim 8, Wiley further discloses the cylinder 24 (Fig.'s 1-2), is pressed down by internal elements 48 ("interior wall"; Fig.'s 2-3; Column 3, Lines 59-62) of the cap 46 (Fig.'s 1 and 2), seals the distribution opening 32 (Fig. 5; Column 3, Line 39) of the seat 42 (Fig.'s 1, 2 and 5) in fluid-tight connection (Column 3, Lines 59-62).

32. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas, as applied to Claim 1 above, in view of Wiley, and further in view of Bennett (US Patent 6,053,650). Lucas discloses all the claimed features, except for the cylinder is pressed down by a knob inside a round cap, which cap is screw fitted to the container, sealing the distribution opening in fluid-tight connection.

33. However, Wiley teaches an applicator device comprising a cylinder 44 (Fig.'s 1 and 2) and a cap 46 (Fig.'s 1 and 2) wherein the cylinder is pressed down by a knob 48 ("interior wall"; Fig.'s 2 and 3; Column 3, Line 59) inside the cap, sealing the distribution opening in fluid-tight connection (Column 3, Lines 59-62), for the purpose of providing an applicator which is easy to manufacture (Column 2, Lines 15-19) due to the simple shape of the parts.

Art Unit: 4118

34. Furthermore, Bennett teaches an applicator having a cylinder 50 (Fig.'s 1 and 2) and a cap 16 (Fig. 1), wherein the cap is screw fitted to the container 12 (Fig. 1; Column 1, Lines 36-44), sealing the container, for the purpose of providing a transparent cap which will alleviate the need to clean the device between uses and will further permit the user to identify the color of the material provided in the reservoir without having to remove the cap (Abstract).

35. Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify Lucas, to include a round cap, which cap is screw fitted to the container, as taught by Bennett, which further provides a knob inside the cap which acts to press down the cylinder, thereby sealing the distribution opening in fluid-tight connection, as taught by Wiley, for the purpose of providing an applicator device which is easy to manufacture due to the simple shape of the parts, and which will alleviate the need to clean the device between uses and will further permit the user to identify the color of the material provided in the reservoir without having to remove the cap.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN VARNUM whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

Art Unit: 4118

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. V./

Examiner, Art Unit 4118

/David J. Walczak/  
Primary Examiner, Art Unit 3751